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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,157	01/17/2006	Daniel D'Amico	VALVO-40US	6437
26875 7590 09/16/2008 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202				
EXAMINER				
JOYNER, KEVIN				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
09/16/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/544,157

**Applicant(s)**

D'AMICO ET AL.

**Examiner**

KEVIN C. JOYNER

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7 and 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 23 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 23 and 25 depend from claims 17 and 19 respectively, which are now canceled. Appropriate action is required. For purposes of examination, the Office will treat the claims as though they depend from independent claim 7.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 7, 23 and 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Spector (U.S. Patent No. 4,647,433).

Spector discloses an air flow through air freshening member that is capable of being used in a vehicle cabin air circulating system comprising:

A base strip of porous material 17, a selected quantity of particulate material 11 having an air freshening substance releasably retained therein (column 3, lines 52-59), and means retaining said particulate material on said base strip;

Said particulate material is located in selected areas spaced apart from one another on said base strip (Figure 5);

Said selected spaced apart areas are enlargements in said base strip (Figure 5);

Said enlargements are pockets (Figure 2);

Said pockets are separate members and means attaching said pockets members to said base strip at positions spaced apart from one another longitudinally there along (column 4, lines 15-22); and

Said pocket members are so spaced as to fit within the pleats of an air filter frame suitably shaped for insertion into a vehicle cabin air circulating system. More specifically, in light of the Applicant's specification the paper material (column 4, lines 15-20) is a porous material. Furthermore, the limitations as claimed do not positively recite a filter with pleats wherein said pocket members are located between the pleats. The limitations as claimed merely recite that said pocket members are spaced so that they can fit within the pleats of an air filter assembly. As such, the air freshening member of Spector fully meets the limitations of the claim. Concerning claims 23 and

25, the reference continues to disclose that the base strip comprises a continuous roll of air freshening material suitable for cutting to a length and applying to said air filter frame (column 4, lines 35-45).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spector (U.S. Patent No. 4,647,433) in view of Linnersten (U.S. Patent No. 5,129,929).

Regarding claim 22, Spector continues to disclose that the pocket members stretch over the entire width of the base strip that are capable of fitting into the pleats of an air filter frame. However, Spector does not appear to disclose that said pocket members have a triangular cross section. Linnersten discloses an air freshening device utilized with particulate filters in order to remove odors from the air. The reference continues to disclose that said air freshening device comprises a base strip with enlargements that are fully capable of retaining a particulate material, and that said enlargements are pocket members (as they are capable of holding a substance) with a triangular cross section in order to conveniently fit into the hollows between the pleats of a filter for compact design (column 2, lines 1-5 & 46-52; column 3, lines 10-40). Thus, it

would have been obvious to one of ordinary skill in the art at the time of the invention to comprise said pocket members of Spector into a triangular cross section in order to conveniently fit into the hollows between the pleats of a filter for compact design as exemplified by Linnersten.

Regarding claim 24, while Spector does disclose that said pocket members stretch over the entire width of said base strip, Spector does not appear to specifically disclose that said pocket members comprise bars having a rectangular cross-section. However, in *In re Seid*, 161 F.2d, 73 USPQ 431 (CCPA 1947), the court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. Accordingly, the claimed limitation is not considered to be patentably distinct from the disclosed air freshening member of Spector.

### ***Response to Arguments***

7. Although not argued, upon further review the Office's previous rejection with respect to claim 7 has been reviewed and replaced. Therefore, the previous 35 U.S.C 103(a) rejection of Van Loveren et al. (U.S. Patent No. 4,14,299) in view of Maleeny et al. (U.S. Publication No. 2003/0097936 has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Spector (U.S. Patent No. 4,647,433).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN C. JOYNER whose telephone number is (571)272-2709. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth L McKane/  
Primary Examiner, Art Unit 1797

KCJ